

## **§ 223.226**

### **§ 223.226 Term adjustments for force majeure delay.**

Contracts or other authorizing instruments for the sale of special forest products, excluding permits, may contain a provision allowing the term to be extended if circumstances beyond the person's reasonable control delay performance. In determining whether such an extension is appropriate, responsible forest officers shall consider the value of the products or species, the length and type of authorizing instrument, the need for early/accelerated harvest, and any other appropriate factors. Circumstances beyond a person's reasonable control may include, but are not limited to, acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections, and floods. The responsible forest officer may grant such an extension upon finding:

- (a) Circumstances beyond the person's reasonable control delayed performance; and
- (b) The person has diligently performed in accordance with the contract or other authorizing instrument.

#### **ADVERTISEMENT AND BIDS**

### **§ 223.227 Sale advertisement.**

(a) The Forest Service shall advertise any special forest products sales with an appraised value equal to or greater than \$10,000 for at least 30 days, except as provided in paragraph (c) of this section.

(b) When the sale's appraised value is less than \$10,000, the Forest Service may sell the products without advertisement; however, if there is competitive interest in a sale valued at less than \$10,000, the Forest Service shall advertise the sale for no less than 7 days.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Forest Service may, at its discretion, sell any special forest products without advertisement, or advertise a special forest products sale for a period less than 30 days if:

- (1) Deterioration of a special forest product threatens its value; or
- (2) The products were previously advertised for competitive bidding and no satisfactory bids were received; or

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(3) The products are remaining from expired, cancelled, or abandoned contracts, permits, or other authorizing instruments.

### **§ 223.228 Contents of advertisement.**

The Forest Service shall include the following information in an advertisement for the sale of special forest products:

- (a) The location and estimated quantities of special forest products offered for sale;
- (b) The time and place at which sealed bids will be opened in public;
- (c) A provision asserting the Agency's right to reject any and all bids;
- (d) The place where complete information on the offering may be obtained; and
- (e) Notice that a prospectus is available to the public and to interested potential bidders.

### **§ 223.229 Contents of prospectus.**

The prospectus for the sale of special forest products shall include the following:

- (a) The minimum acceptable value or unit price for a product and the amount or rate of any deposits required in addition to the unit price of a product;
- (b) The amount of the bid guarantee that must accompany each bid;
- (c) The amount of the deposit or downpayment the successful bidder must make and the time-frame for making such deposit or downpayment;
- (d) The location and area of the sale, including acreage;
- (e) The estimated volumes, quality, size, or other appropriate measure for the special forest products;
- (f) A description of any special harvest and removal requirements for the sale;
- (g) The method of bidding that the Forest Service will employ; sealed bid or sealed bid followed by oral auction;
- (h) The type of contract, permit, or other authorizing instrument to be used for the sale;
- (i) The termination date and normal operating season, if any, of the contract, permit, or other authorizing instrument;
- (j) The amount of performance bond required; and

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(k) Such additional information about the sale as the Forest Service deems appropriate in order to encourage bidders to perform on-site investigations.

### § 223.230 Bid restriction on resale of incomplete contracts, permits, or other instruments.

In any resale of special forest products remaining from a previous sale, the Forest Service shall not consider a bid submitted by a person who failed to complete or defaulted the original contract, permit, or other instrument authorizing the sale, or from any affiliate of such person, except when such consideration serves the public interest.

### § 223.231 Bidding methods.

The Contracting Officer or designated forest officer shall offer advertised sales of special forest products through sealed bid or sealed bid followed by oral auction. The method selected shall:

- (a) Ensure open and fair competition;
- (b) Ensure that the Federal Government receives minimum rates or appraised value, whichever is higher;
- (c) Be consistent with the National Forest Management Act and other applicable federal laws;
- (d) Require, as a prerequisite to participation in an oral auction, that a bidder submit a written sealed bid at least equal to the minimum acceptable bid price(s) specified in the prospectus. The Forest Service shall not accept a bid at oral auction that is less than the bidder's initial sealed bid; and
- (e) Specify the use of sealed bids or a mix of bidding methods in the affected area where there is a reasonable belief that collusive and/or abnormal bidding practices may be occurring.

### § 223.232 Disclosure of relation to other bidders.

The Forest Service may require any prospective bidder for special forest products to disclose its relationship with other potential bidders or operators. Such disclosure may include a certified statement listing:

- (a) Stockholders or members of the bidder's firm;
- (c) Officers;

(d) Members of the board of directors; or

(e) Holders of bonds, notes, or other types of debt.

### AWARD OF CONTRACTS, PERMITS, OR OTHER AUTHORIZING INSTRUMENTS

### § 223.233 Award to highest bidder.

(a) The Forest Service shall award contracts, permits, or other authorizing instruments for advertised sales as follows:

(1) The Forest Service will award a special forest products sale to the responsible bidder that submits the highest bid that conforms to the sale conditions in the prospectus.

(2) If the highest bidder cannot meet the conditions for the sale, as specified in the prospectus, the Forest Service may:

- (i) Reject all bids and reoffer the sale, or
- (ii) Offer the award at the high bid level to the next highest qualified bidder until the award is accepted or refused by all of the conforming bidders.
- (iii) In the event of a tie between two or more responsible high bidders submitting conforming bids, the Forest Service shall award the sale by drawing of lots.
- (iv) If no bids meet the specified conditions in the sale's prospectus, or if there are other irregularities in the bidding process, the Forest Service may reject all bids, and, at its discretion, reoffer the sale.

(b) [Reserved]

### § 223.234 Determination of responsibility.

(a) A Contracting Officer shall not award a contract, permit, or other instrument authorizing the sale of special forest products to a declared high bidder unless that officer makes an affirmative determination that the person is responsible. In the absence of information clearly establishing that the declared high bidder is responsible, the Contracting Officer shall conclude that the declared high bidder is not responsible.

(b) In order to make an affirmative determination of responsibility, the Contracting Officer must find that: